

PUBLISHED DECEMBER 4, 2014

OFFICIAL PROCEEDINGS

Excerpt from the minutes of the Duluth City Council meeting held on Monday, November 24, 2014, at 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

ORDINANCE NO. 10342

AN ORDINANCE GRANTING TO UNIVERSITY OF MINNESOTA DULUTH A CONCURRENT USE PERMIT FOR THE INSTALLATION OF SIX UNDERGROUND CONDUITS AND ONE SANITARY SEWER UNDER WEST SAINT MARIE STREET.

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is granted to Regents of the University of Minnesota (the "University of Minnesota Duluth" or "university") and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

(a) Six underground conduits (four electrical and two communication) located in the right-of-way of West Saint Marie Street, with conduits bored in at a minimum depth of two feet and one sanitary sewer located in the right-of-way of West Saint Marie Street, bored in at a minimum depth of seven feet, as shown in Public Document No. 14-1124-14.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the planning division a certification of insurance approved as to form by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

(a) "Commercial general liability" insurance with limits not less than \$1,500,000 each occurrence/general aggregate. The policy shall be written on an occurrence basis, shall include contractual liability coverage and shall name the city of Duluth as an additional insured; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within public easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its agents or representatives; and

(c) The policy shall contain a condition that it may not be cancelled without 30 days' written notice to the city of Duluth and directed to the attention of the city attorney; and

(d) The city of Duluth shall be named as an additional insured; and

(e) The certificate shall also reference this ordinance by its ordinance number.

Section 3. The university shall remain responsible for the ownership, operation and maintenance of these utilities, including performing utility locates in accordance with the Gopher State One Call rules.

Section 4. As soon as feasible after construction, the university will furnish the city of Duluth with record drawings prepared in accordance with city of Duluth standards. In addition, the university shall furnish digital comma delimited file (CSV) files to provide location data for the improvements.

Section 5. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 90 days' written notice delivered to the last known electronic address, facsimile number or mailing address of the permittee shall be sufficient notice of termination.

Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 6. By accepting the terms of this ordinance, the permittee and city agree to save

harmless and defend and indemnify the other party against claims or demand which may arise against the indemnified party by reason of the existence of private improvements, or any act or omission of the indemnifying party, its employees, agents and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engages in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations except that arising solely from the negligent or willful misconduct of city. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements. Either permittee or city may, to the extent applicable, raise as a defense in any action by a third party to which this indemnification obligation relates statutory limits on the other's liability.

Section 7. The permittee shall, at its expense, protect, support, temporarily disconnect or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 8. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the planning division within five days of such transfer. The permittee's successor in interest shall file with the planning division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 9. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days' written notice, delivered as provided in Section 3 above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3.

Section 10. The permittee shall observe the following conditions:

(a) Permittee's use of the public easement shall be limited to the designated area described in Section 1 above and further shown on Public Document No. 14-1124-14; and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way to interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement.

Section 11. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file the required insurance certificate as specified in Section 2 30 days after this ordinance takes effect; or

(b) The failure of the permittee to commence the improvements authorized by this ordinance within 120 days after this ordinance takes effect.

Section 12. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: January 3, 2015)

Councilor Russ moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Russ, Sipress and President Larson -- 8

Nays: None -- 0

Absent: Councilor Krug -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed November 24, 2014
Approved November 24, 2014
DON NESS, Mayor